

6 pages.

ROYAL COURT  
(Samedi Division) 188.

16th September, 1994

Before: F.C. Hamon, Esq., Commissioner, and  
Jurats Myles and Orchard.

<u>Between:</u>	H	<u>Plaintiff</u>
<u>And:</u>	D	<u>Defendant</u>

Appeal of the Defendant, pursuant to Rule 15 of the Royal Court Rules, 1992, as amended,  
from the decision of the Deputy Judicial Greffier on maintenance and access, of 1st July, 1994.

Advocate P.C. Harris for the Defendant.  
Advocate R.G.S. Fielding for the Plaintiff.

JUDGMENT

5 THE COMMISSIONER: This is an appeal from a decision of the Greffier  
Substitute dated 1st July, 1994, in which he ordered the defendant  
to pay £45 per week by way of maintenance for the child of the  
parties, to the Plaintiff, who is the mother. The payment was to  
be free of any deduction and to be paid by Banker's Order into the  
10 Plaintiffs bank account, until the child - C - attains the age  
of 16 years or ceases full-time education whichever shall be the  
later or until further order. The maintenance was subject to  
annual review based on the Jersey Cost of Living Index and, of  
course, subject to review in the event of a material change of  
15 financial circumstance.

15 There was no order for arrears of maintenance, no order as to  
costs, and the order was not (although it said that it was) made  
by consent.

20 We had no notes of the hearing before the Greffier Substitute  
and apparently he gave no reasons for his decision other than to  
say, according to Counsel, that "in his view, it costs more than  
£100 a week to support a child and he therefore ordered £45 per  
week towards C's maintenance".

We say this because, even if we had not considered our opening remarks in Murphy (otherwise Gilson) -v- Gilson, (25th April, 1991) Jersey Unreported; (1991) JLR N.10, we would have had no alternative but to hear the matter "de novo".

Let us first emphasise an important matter. In considering the interest of C (which is paramount) we need to remind ourselves that in a report prepared for the Court and headed "Interim Welfare Report" dated the 1st July, 1994, the Court Welfare Officer wrote this:

*"It was very clear during our interviews that both these parents are very committed to their son. He loves them both very much and is very anxious to maintain a good relationship with both of his parents."*

Both parents gave evidence before us; further affidavits were supplied. One sworn by H was made only today.

Mr Fielding, for the father, told us that he brought his objection on the grounds that the Greffier had ignored the actual cost of maintaining C and the actual means of the parties.

We examined in some detail the means of Mr Deeming and the means of H:

In his chapter, 'Des Aliments', Le Gros (at page 359) says under "Enfants Illégitimes" - *"Celle qui a donné naissance à un enfant..... ne peut échapper aux conséquences morales de sa faute"*. And again at page 360: *"La pension hebdomadaire que la cour accorde est censée comprendre les frais de la nourriture, de l'entretien et de l'éducation de l'enfant"*.

Even further back in time, Poingdestre wrote in his "Lois et Coutumes" at page 149: *"Le père, s'il est aisé, est tout le premier obligé à la nourriture de son enfant, fils ou fille, non seulement durant leur enfance et minorité d'âge, mais aussi longtemps qu'ils ne pourront se nourrir eux mêmes"*. And again at page 150: *"Et cette obligation du père envers l'enfant, est du Droit de Nature, et ne peut être cancellée sinon au cas que le père serait incapable de fournir à la nourriture dudit enfant; alors aurait lieu le Proverbe que 'qui ne peut pour soy, ne peut pour autrui' et que 'la charité commence par soy mesme'."*

What of the ability of D to pay?

He is a self-employed gardener. His earnings are not guaranteed. He charges his time at £8.50 per hour. He employs, on a part-time basis, a workman A whom he pays £25 per day and whose time is charged out at £7.00 per hour. His irregular earnings are shown by the fact that in August, 1993, he

received £389.50; in January, 1994, he received £1,610.06. In 1992, he was assessed by Income Tax as earning £8,223.00 net. He paid no tax. When it rains, he maintains his machinery.

5 He owned a boat, It is a 1934 sailing boat (with an inboard motor) some 29 feet long. Immediately after the Greffier's ruling, D set out on an "adventure" with his nephew whom he has employed at times in his gardening business. That "adventure" (D's words) lasted 10 7 weeks and 2 days. It was a round Britain trip with the purpose of raising money for the R.N.L.I. In fact only some £120 was raised by way of collection. D had apparently obtained £4,000 sponsorship from Le Riches Stores. This did not materialise. D also agreed to sell his gardening 15 business. That sale did not materialise. He entered into an agreement with E (who owns a garage which D owes some £222.36) whereby E purported to "accept ownership" of the vessel which D could purchase back for £2,000 before the 25th November, 1995. All outgoings and 20 liabilities remained with D. He set off on the trip and some two months later returned to Jersey. The boat remains moored at St. Aubin.

25 He now lives in St. Aubin. He pays rent of £930 per month in this terraced four bedroomed property. Three "licencees" who probably have no housing qualifications pay £230, £230 and £240 respectively.

30 They hand their cheques to D - which are made out to the landlord who is responsible for certain outgoings including the occupiers' rate and the television facilities. D shares the gas and electricity charges with the other occupiers.

35 He owes money to Social Security to the extent that he is not eligible for Sickness Benefit. He had some £205.59 owing to the Department on the 30th June, 1994. He told us that the September quarter day will show no change in the position. Both his bank statements with Midland Bank show that he is overdrawn. His 'Vector' account with Midland on the 1st September, 1994, was 40 £468.85 overdrawn (there is a £500 overdraft facility). He owes £479.69 on another Midland Bank loan. He has a Ford tipper truck which he is purchasing from F for some £50 per month. His other vehicle is not roadworthy and is stored at St. Aubin's where he can, if necessary, cannibalise it for spares. We have 45 examined in detail such matters as dental bills and hairdressing. There was criticism of D's life style in that almost immediately after the hearing he had taken his new companion on holiday to Carteret with her two children. She had booked the hotel and paid for it and he returned with his boat to Jersey to 50 mow lawns before returning to continue his holiday. That holiday lasted from the 8th to the 21st August. It is virtually impossible to fine down the detailed financial situation of D.

His is fit and able. He choses to be self employed. He has a very comfortable home and a boat equipped with modern G.P.S. equipment, radio and life jacket. He has means of transport. He is able to employ staff and support his rental by taking in what are apparently paying guests. He can afford to take holidays. He owes money to many people but seems to have the ability to avoid Court actions. He does not have the day to day responsibility of looking after C. Indeed if we follow Mr. Fielding's detailed argument, each month after tax D is some £80.00 in deficit.

H having been made redundant in 1991, is employed on a part time basis as a shop assistant. She lives

as a States Tenant with C. H struck us as being somewhat naive financially. When she received a redundancy payment of £5,724.72 she used this money to supplement her income rather than use it to pay off her bank loan which she took out some four years ago to furnish the flat in which she lives with C. If D is "floundering in debt, confused and naive", as Mr. Fielding described him, then so, to some extent, is

H who has had to rely to some extent on financial help from her mother and sister and the Parish of St. Helier. She has received only £300 in three equal tranches from D since the Greffier Substitute gave his judgment. We have, as the Greffier Substitute did before us, examined in some detail the breakdown of H's financial affairs. We have noted the criticisms; for example, that H buys small presents for the child minder who, as a friend, would not accept money and that C was given a television and video for his birthday with the aid of a loan from the Channel Island Co-operative Society.

D offered £15.00 per week; the Greffier substitute ordered £45.00 per week. We are prepared to amend the order to £35.00 per week on the same terms as set out by the Greffier Substitute in his order. We can see that D has the potential to earn substantially more should he be so minded.

We are asked in this judgment to deal with access. While the mother of an illegitimate child has the sole custody and guard of it (see Thomas -v- O'Shea, (née Poingdestre) (22nd September, 1988) Jersey Unreported; (1987-88) JLR N.12, the rights of the natural father should not be disregarded. Indeed, we have an Order of Justice dated the 27th August, 1993, which was adjourned "sine die" on 12th November, 1993. Part of the prayer of that Order of Justice asks for the Children's Office to prepare a report. The report has been in our view extremely thorough. There were several interviews and home visits. C was talked to about his feelings regarding access to his father. There was even a "parental agreement" in general terms concerning access by C to his father". This was signed by the parties.

H is concerned because of an incident that occurred on the 27th August. C was to have been brought back to her by 7.00 p.m. As it was, through sheer thoughtlessness, she was not notified until 10.00 p.m. that C was safe at St. Aubins Harbour where his father was collecting a mattress for him from the boat. She had been frantic with worry; she had to contact the police and ask her brother to help locate C. All these problems do nothing to help a relationship in which C can continue to develop as the loving little boy that he clearly is. They could have been resolved had D given the matter mature thought. Despite that, and because of the praise given to both parents in the report we are prepared to allow D an extension of the access on Saturday between 5.00 p.m. and 7.00 p.m. on condition that if he takes C to his swimming lessons then C is to be presented there in a clean and tidy condition. We say this because H has an understandable concern that if, for example, he has been helping his father with the boat at low tide in St. Aubin's harbour he could be very muddy. She has seen him in that condition. It is also on condition that times are strictly adhered to and if there should be an unforeseeable delay in timing then D will so inform H.

We have considered the powers of the Court to make such an order, but considering Thomas -v- O'Shea (supra) we have no doubt that our inherent jurisdiction allows us not only to make the order but also to police it. The Order of Justice still stands adjourned but we would wish the parties to consider that a serious default on the access could have as its consequence an action for contempt of Court.

Authorities

Le Gros: "Traité du Droit Coutumier de l'Île de Jersey": des  
Aliments: p.p. 359-361.

Gilson -v- Gilson (25th April, 1991) Jersey Unreported; (1991)  
JLR N.10.

Thomas -v- O'Shea (née Poingdestre) (22nd September, 1988) Jersey  
Unreported; (1987-88) JLR N. 12.

Hullah -v- Lelliott (27th February, 1991) Jersey Unreported.

Poingdestre: "Les Lois et Coutumes de l'Île de Jersey": de  
Alimentis: p.149.